

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2076

Introduced by Assembly Member Fuentes

February 19, 2008

An act to add Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2076, as amended, Fuentes. Employment: hiring practices.

The E-Verify program of the United States Department of Homeland Security, *in partnership with the United States Social Security Administration*, enables participating employers to verify that the employees they hire are authorized to work in the United States.

Various provisions of existing state and federal law prohibit discrimination in employment on different bases, including, but not limited to, the race, color, sex, religion, and marital status of a person.

~~This bill would express the intent of the Legislature to enact legislation to ensure that employers enrolled in the federal E-Verify program receive training materials and comply with applicable state and federal antidiscrimination laws.~~

This bill would prohibit the State of California from participating in any employment eligibility verification system, unless required by federal law. The bill would also prohibit a county or municipality from requiring any employer to use an employment eligibility verification system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) "E-Verify" (formerly known as the Basic Pilot/Employment*
4 *Eligibility Verification Program) is a voluntary Internet-based*
5 *program the purpose of which is to allow employers to*
6 *electronically verify workers' employment eligibility by accessing*
7 *information in databases maintained by the Department of*
8 *Homeland Security (DHS) and the Social Security Administration*
9 *(SSA).*

10 *(b) As of February 2008, 52,000 out of approximately 7 million*
11 *employers nationwide are enrolled in E-Verify and these numbers*
12 *are quickly increasing. Over 2,700 of the more than one million*
13 *California employers are enrolled in the system. These numbers*
14 *continue to rise as the federal government is actively campaigning*
15 *for increased use of the system.*

16 *(c) While E-Verify often is portrayed as the magic bullet that*
17 *would curb the hiring of unauthorized workers, the program has*
18 *been plagued by a multitude of problems since its inception in*
19 *1997. Numerous entities, including those that researched and*
20 *wrote two independent evaluations commissioned by the former*
21 *Immigration and Naturalization Service in 2002 and by the DHS*
22 *in 2007, the Government Accountability Office, and the SSA's*
23 *Office of the Inspector General, have found that E-Verify has*
24 *significant weaknesses, including:*

25 *(1) Reliance on outdated government databases that have*
26 *unacceptably high error rates.*

27 *(2) Employer misuse of the program to take adverse action*
28 *against workers.*

29 *(d) There is no enforcement mechanism to ensure that employers*
30 *are following the standard rules and procedures outlining the use*
31 *of E-Verify as prescribed in the memorandum of understanding*
32 *that registering employers enter into with the federal government.*

33 *(e) The high error rate of E-Verify affects all workers, but has*
34 *a disproportionate impact on lawful foreign-born workers who*
35 *are 30 times more likely than native-born workers to be incorrectly*
36 *identified as not authorized for employment. Foreign-born United*
37 *States citizens feel the greatest impact, with almost 10 percent*

1 initially being told that they are not authorized to work (versus
2 0.1 percent for native-born United States citizens).

3 (f) Lawful immigrant and minority workers are more likely to
4 face discrimination through E-Verify based on their race, ethnicity,
5 national origin, and native language.

6 (g) For these reasons, it is the intent of the Legislature that the
7 State of California not participate in the voluntary but flawed
8 system and send a strong signal to other states and employers that
9 E-Verify shall not be used or mandated while deficiencies within
10 the system persist.

11 SEC. 2. Article 2.5 (commencing with Section 2811) is added
12 to Chapter 2 of Division 3 of the Labor Code, to read:

13
14 Article 2.5. Employment Eligibility Verification Systems
15

16 2811. (a) The State of California shall not participate in any
17 employment eligibility verification system, unless otherwise
18 required by federal law.

19 (b) No county or municipality shall require any employer to use
20 an employment eligibility verification system, including under any
21 of the following circumstances:

22 (1) As a condition of receiving a government contract.

23 (2) As a condition of receiving a business license.

24 (3) As a penalty for violating licensing or other similar laws.

25 ~~SECTION 1. It is the intent of the Legislature to enact~~
26 ~~legislation to ensure that employers enrolled in the federal E-Verify~~
27 ~~program, which allows employers to verify that new employees~~
28 ~~are authorized to work in the United States, receive training~~
29 ~~materials and comply with applicable state and federal~~
30 ~~antidiscrimination laws.~~